

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

**JEFFREY M. ETTER,**

**Plaintiff,**

**v.**

**AXONICS MODULATION  
TECHNOLOGIES, INC. ET AL.,**

**Defendants.**

**Case No.:**

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**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendants Axonics Modulation Technologies, Inc. (“Axonics”) and Raymond Cohen (“Cohen,” and collectively with Axonics, the “Defendants”), by their undersigned counsel, file this Notice of Removal of the above-captioned matter from the Circuit Court of Norfolk to the United States District Court for the Eastern District of Virginia, Norfolk Division. As its grounds for removal, Defendants state as follows:

1. On or about December 7, 2020, Plaintiff Jeffrey M. Etter (“Plaintiff”) filed his Complaint in the Circuit Court of Norfolk, Virginia. The case is entitled Etter v. Axonics Modulation Technologies, Inc. and Raymond Cohen, and is assigned case number CL20011930-00.

2. On or about January 14, 2021, Defendant Axonics was served with a copy of Plaintiff’s Summons and Complaint.

3. Plaintiff’s Summons and Complaint constitute all process, pleadings and orders served in this action as of this date and are attached as Exhibit 1, as required by 28 U.S.C. § 1446(a).

4. This Notice of Removal is being filed within 30 days after Axonics was served a copy of Plaintiff's Summons and Complaint. Accordingly, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) and Fed. R. Civ. 6(a).

5. This matter is a civil action of which the district courts of the United States have original jurisdiction by virtue of the diversity jurisdiction granted by 28 U.S.C. § 1332.

6. The matter is between citizens of different states. *See* 28 U.S.C. § 1332(a)(1). Plaintiff is a citizen of Virginia. Defendant Cohen is a citizen of California. For purposes of diversity jurisdiction, a corporation is deemed to be a citizen of the State in which it was incorporated and the State where it has its principal place of business. 28 U.S.C. § 1332(c)(1). Axonics is incorporated in the State of Delaware, and its principal place of business is Irvine, California. Accordingly, Axonics is a citizen of Delaware and California for diversity purposes. Plaintiff does not share a state of citizenship with either of the Defendants.

7. Based on the Complaint's express demand for damages totaling \$750,000.00, the amount in controversy in this matter exceeds the sum or value of \$75,000, exclusive of interest and costs.

8. Under 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." The United States District Court for the Eastern District of Virginia, Norfolk Division is the federal district court and division which includes the Circuit Court of Norfolk, Virginia, this Court is the appropriate venue for removal.

9. Pursuant to 28 U.S.C. § 1446(d), a true and complete copy of this Notice of Removal will be submitted for filing with the Clerk of the Circuit Court of Norfolk and served upon Plaintiff. A copy of the Notice of Filing Notice of Removal is attached as Exhibit 2.

10. The required filing fee and an executed civil cover sheet accompany this Notice.

11. Defendants submit this Notice of Removal without waiving any defenses to the claim asserted by Plaintiff or conceding that Plaintiff has pled claims upon which relief can be granted.

WHEREFORE, having fulfilled all statutory requirements, Defendants respectfully request that the Clerk of the Court note that this action has been removed from the Circuit Court of Norfolk, Virginia to the United States District Court for the Eastern District of Virginia, Norfolk Division, and that all proceedings hereafter shall take place in the United States District Court for the Eastern District of Virginia, Norfolk Division.

Dated: February 9, 2021

Respectfully submitted,

/s/ Yvette V. Gatling

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*Counsel for Defendants Axonics Modulation  
Technologies, Inc and Raymond Cohen*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 9th day of February 2021, a copy of the foregoing

**DEFENDANTS' NOTICE OF REMOVAL** was served by federal express upon the following:

James T. Taylor, Esq.  
Barry Montgomery, Esq.  
Kalbaugh, Pfund & Messersmith, P.C.  
Richmond Office  
901 Moorefield Park Drive, Suite 200  
Richmond, Virginia 23236

*Counsel for Plaintiff*

/s/ Yvette V. Gatling

Yvette V. Gatling